

The Reverend Father in GOD WELBORE
Lord Bishop of KILDARE, and Dean of the
Cathedral Church of the Holy Trinity,
Dublin, Qui tam pro Domino Rege, quam
pro seipso sequitur - - - - - } Plaintiff.

The most Reverend Father in GOD, William
Lord Archbishop of DUBLIN - - - - - } Defendant.

In a WRIT of ERROR of a Judgment in the Court of King's Bench in England, in Affirmance of a Judgment in the Court of King's-Bench in Ireland, in Affirmance of a Judgment in the Court of Common-Pleas there, in a Prohibition.

The Plaintiff in Error's C A S E.

THE Plaintiff in Prohibition declares, That all Deans and Chapters founded of the Bounty of the Queen, or any of her Predecessors, Kings or Queens of Ireland, ought to be governed according to the Rules expressed in the Charters whereby they are founded, and not subject to the Visitation of any Archbishop or Bishop; And whereas the Convent, Monastery or Priory of the Church, and near the Church of the *Holy Trinity Dublin*, was an antient Convent, Monastery or Priory, founded of the Royal Bounty; And whereas also the Church of the *Holy Trinity Dublin* was erected and endowed by the Bounty of divers Kings and Queens of Ireland Her Majesty's Predecessors:

And whereas King *Henry* the VIII. being seized in Fee in Right of his Crown of the said Priory, and all the Lands thereto belonging, by Letters Patent dated *May 10th Anno 33* of his Reign, did transpose and change the said Priory into a Dean and Chapter, and made the Prior Dean, one of the Monks Precentor, another Chancellor, another Treasurer, and Six others Vicars-Choral, and incorporated them by the Name of *The Dean and Chapter of the Cathedral Church of the Holy Trinity Dublin*, with Power to purchase and sue; and gave them a Common Seal and Power to make By-Laws, to allot what Possessions each was to have, and to elect Vicars on Vacancies, and put them in Possession; Reserving to the King, &c. the Nomination, Donation, and Installation of the Dean, Precentor, Chancellor and Treasurer, and their Successors; and granted them all Manors, Lands, &c. Advowsons, Churches, Rectories, &c. and other Hereditaments, as well Spiritual as Temporal, which belonged to the said late Prior, in Right of the Cathedral Church aforesaid.

The Declaration farther sets forth, That King *Philip* and Queen *Mary* by their Letters Patent dated in the 1st and 2d Years of their Reign (reciting, That King *Edward VI.* by his Letters Patent, had augmented their Number with Six Presbyters and Two Choristers during his Pleasure, with a Pension to each for their Subsistence) made the Six Presbyters and the Two Choristers, with their Stipends, perpetual, and granted, that the Dean and Chapter should have the Nomination of them, and of all other inferior Ministers in the said Church.

And

And further sets forth, That whereas King *James* the 1st. by Letters Patents, which the Plaintiff produces in Court, dated 12th of *June* in the 2d Year of his Reign, changed the six Vicars Choral, into Three Prebendary Canons, and the Six *Presbyters* into Six Vicars Choral, and constituted certain Persons then by Name, to be Dean, Chaunter, Chancellor and Treasurer, and Three Prebendaries, viz. of *St. Michael* in *Dublin*, *St. Michael juxta Dublin*, and *St. John* in *Dublin*.

And then made them all a Corporation, by the same Name they had before, and granted them anew all the Possessions which the Prior had, as fully and amply as they were in the Hands of any of the said Kings and Queens, by any Title whatsoever, and granted the said Dean and Chapter, Power from Time to Time, to make By-Laws for the good Government of the said Church, and to alter and change the same, and to make others in their stead.

And the Declaration further says, That by Virtue thereof the said Dean and Chapter have hitherto continued a Corporation, and exercised the Authorities granted them, without the intermedling of any Archbishop of *Dublin* for the Time being.

And that the said Deanary being become Vacant, by the Translation of *William* late Lord Bishop of *Kildare*, and Dean of the said Cathedral Church of the *Holy Trinity, Dublin*, to the See of *Meath* (which Deanary the said late Lord Bishop of *Kildare* held in *Commendam* with the said Bishoprick of *Kildare*) Her late Majesty Queen *Anne*, by her Letters Patent dated the Second of *September*, in the Fourth Year of her Reign, by the Plaintiff produced in Court, did Constitute and Ordain the Plaintiff Dean of the said Cathedral Church, and put him into the actual Possession of the said Deanary; and that, by Virtue of the said Letters Patent, he hath ever since enjoyed all the Rights and Privileges by Letters Patent granted to the said Deans of the said Cathedral Church, and their Successors.

Then suggests. That the Cognizance of Royal Grants by Letters Patent, as to their Strength and Vigour, belong to the Queen and her Court, and not to the *Spiritual Court*; The Defendant, nevertheless, hath sued the Plaintiff in the *Spiritual Court*, as Dean of the said Cathedral Church of the *Holy Trinity, Dublin*, under Pretence of Contempt for not appearing; and citing the Chapter, and other Members of the said Church, to appear at the Defendant the Archbishop's Ordinary Visitation; and that, notwithstanding the Prohibition, he proceeded against him in the *Spiritual Court*, to his Damage, &c. And therefore, as well for the Queen, as for himself, brought this Suit, &c.

The Archbishop's
Plea.

The Defendant prays Oyer of the said several Letters Patent, which being read to him, in *hac verba*, he denies his Prosecuting in the *Spiritual Court* after the Prohibition delivered; and upon that, Issue is joined; But for obtaining a Consultation for Plea, says, That the Archbishoprick of *Dublin* is an Ancient Archbishoprick, and that the said Church of the *Holy Trinity, Dublin*, is an Ancient Church, and within the said Archbishoprick, and, Time out of Mind, was the Cathedral Church thereof; and, that the said Priory was an Ancient Priory, and the Prior and Canons thereof, were, Time out of Mind, till they were Translated into the said Dean and Chapter; and the said Dean and Chapter, afterwards, were the Chapter of the Archbishop of *Dublin*; and, that the Defendant, and all his Predecessors the Archbishops of *Dublin* for the Time being, Time out of Mind, did and used to Visit the said Priory till the Time of the Translation; and afterwards, as often as there was Occasion, were used to Visit the said Dean and Chapter.

The Defendant further saith, That he being then and yet Archbishop of *Dublin*, the Eighth of *March* 1710, at *St. Sepulchres* within the Diocess of *Dublin*, did Decree to hold an Ordinary Visitation of the said Dean and Chapter,

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Chapter, in their Chapter House, situate within the said Cathedral Church, the usual Place for such Visitation, upon the Ninth of *April 1711*, according to Law, and the Manner and Custom aforesaid, and the *Plaintiff in Error* being then, and yet, Dean of the said Cathedral Church, was afterwards, the same 16th of *March 1710*, duly Summon'd and Cited by the said Citation in the *Plaintiff's* Writ and Declaration mentioned.

The *Defendant* then says, That on the said 9th of *April 1711*, between the Hours of Ten and Eleven in the Forenoon, the usual Hour for such Visitation, he went to the *West Door* of the said Cathedral, the usual Door by which the Archbishops of *Dublin* for the Time being, used to go to the said Chapter-House, for making such Visitation; and that the said Door was shut, and no other way open thereunto; and tho' the *Defendant* endeavour'd, by all Lawful Ways and Means, to enter into the said Chapter-House for making his said Visitation, he could not get thereinto; whereupon he held his Ordinary Visitation of the said Dean and Chapter at the said *West Door* of the said Church; and tho' the *Plaintiff* was duly Summoned and Cited to appear, and undergo the said Visitation, yet he, tho' he was then and there solemnly required, did not appear, nor would undergo the said Visitation; and it was so far proceeded by the *Defendant* in his said Visitation, that he pronounced the *Plaintiff* Contumacious, and Prorogued his Visitation of the said Dean and Chapter, to the Cathedral Church of *St. Patrick, Dublin*, where it was further continued, and proceeded therein, as by the *Plaintiff's* Writ and Declaration is set forth, as was lawful for him to do, without that, that the said Monastery or Priory was Founded of Royal Bounty, as is supposed by the said Writ and Declaration.

To this Plea, the *Plaintiff*, *qui tam*, &c. Demurs, and shews for Cause, That the *Defendant* Traverſes an immaterial Matter not Traverſable; and for that the said Traverſe is ill taken; and for that the Matter in the said Plea doth not answer the Matter contained in the *Plaintiff's* Declaration; and also for that the several Prorogations of the pretended Visitation and Proceedings in the Plea alledged, were Invalid and not Legal; And the *Plaintiff* joins in Demurrer.

The Matter in Controversy in this Action upon the Prohibition was properly, Whether the King, or the Archbishop, has the Right of Visitation of this Dean and Chapter? and to that Purpose, Whether this Chapter as created, modelled, and formed into a Dean and Chapter, by the Charters of King *Henry VIII.* King *Philip* and Queen *Mary*, and King *James I.* (and which Charters give them the very Lands the Dean and Chapter subsist on) is not now to be deemed on this Record as a Corporate Body of Royal Foundation? For if so, it is humbly apprehended, that the King, and not the Archbishop, is properly Visitor; and therefore, that which was the Principal Matter in Question, as to the Point of the Visitation Power, was, Whether the Dean and Chapter was, or was not, founded of Royal Bounty? But the Archbishop, to avoid that, which was the Question, would by his Traverſe introduce another Question, in no Sort material to the Case, viz. Whether the Monastery or Priory was founded of Royal Bounty? So that it is apprehended, the Traverſe in the Plea is manifestly ill, and well demurred to by the *Plaintiff*.

And if the King is Visitor of this Chapter, as of Royal Foundation, then the Dean was right to refuse Obedience to the Archbishop's usurped Power of Visitation, in Prejudice to the King's Power, as Visitor; consequently, the Archbishop's Proceedings in his Court, to censure the Dean as contumacious, for such Refusal of his usurped Power, was unjustly instituted there; and the Courts of Common-Law in *Ireland* ought to have prohibited such Suit, and given Judgment against the Archbishop, in Favour of the King's Power: But however, Judgment was given in the *Common-Pleas* in *Ireland*, for the *Defendant*; which Judgment was affirmed

affirmed in the *King's-Bench* there, and, upon a Writ of Error brought into the *King's-Bench* in *England*, is also affirmed there.

Notwithstanding which, the *Plaintiff* humbly conceives, and is advised, That the said several Judgments are erroneous, not only for the several Causes of Demurrer and other Matters herein before mentioned and set forth; but also for the Faults, Defects, and other Matters by him particularly assigned for Error, and manifestly appearing in the said Record and Proceedings, now lying in Judgment before your Lordships, and divers other apparent Errors therein.

Wherefore the Plaintiff humbly hopes, That the said Judgments shall be severally Reversed, and he be otherwise Relieved in such Manner as to Your Lordships shall seem meet.

J. DARNALL

FETTIPLACE NOTT

The Lord Bishop of Kil-
dare, Dean of the Church
of the Holy Trinity,
Dublin : Plaintiff in
Error.

The Lord Archbishop of } Defendant
Dublin } in Error.

The Plaintiff in Error's Case.

To be Heard on Thursday the 23d
of April, 1724.

Judgments affirmed
and Co. Cost